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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,425	08/16/2001	Kirk C. Salomon	10629-003	2900

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NEW YORK, NY 100362711

EXAMINER

GUBIOTTI, MATTHEW P

ART UNIT	PAPER NUMBER
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2124

8

DATE MAILED: 06/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/931,425

Applicant(s)

SALOMON, KIRK C.

Examiner

Matthew Gubiotti

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,7. 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

1. Claims 1-7 are pending in this application.

***Drawings***

2. The drawings are objected to because they contain hand written notations and visible copy marks (See e.g. Fig.3). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 1 recites the limitation the "local wireless application server" in Line 13. There is insufficient

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antecedent basis for this limitation in the claim and confusion as to whether one server is local or if all servers are remote. The limitation has been further treated by the Examiner below as reading "remote wireless application server".

Claims 2-7 are rejected as being dependent on a rejected base claim.

6. Claim 3 recites the limitation the "local wireless application server" in Line 3. There is insufficient antecedent basis for this limitation in the claim and confusion as to whether one server is local or if all servers are remote. The limitation has been further treated by the Examiner below as reading "remote wireless application server".

7. Claim 4 recites the limitation "install a different set of wireless application server" in Line 2. The lack of clarity and improper use of grammar renders the claim indefinite. The claim has been further treated below by the Examiner as reading "install a different set of software components".

8. Claims 5 recite the limitation "wireless server applications" in Line 2. The Examiner is not certain from the inconsistent choice of language if the limitation is making reference to the "one or more wireless application server programs" (Claim 1, Line 10) or the "one or more client applications" (Claim 1, Line 11). The claim has been further

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treated below, reading the limitation as "one or more wireless application server programs".

Claim 6 is rejected as being dependent on a rejected base claim.

9. Claim 6 recites the limitation "the central application server" in Line 3. There is insufficient antecedent basis for this limitation in the claim. The claim has been further treated below, reading the limitation as "a central application server".

10. Claim 7 recites the limitation "one or more local application server" in Line 2. There is insufficient antecedent basis for this limitation in the claim and confusion as to whether one server is local or if all servers are remote. The claim has been further treated below, reading the limitation as "one or more remote wireless application servers".

#### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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12. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Fette et al. (U.S. Pat. No. 6,052,600) (hereafter Fette).

Claim 1

Fette teaches a system for software distribution over a wireless network substantially as claimed (See Abstract; fig.1, col.2, li.34-45) comprising:

An application server program configured to be downloaded to and executed on one or more remote wireless application servers (fig.1, ref.10), said program being further configured to cause the one or more remote wireless application server to download and install one or more wireless application software components (col.4, li.25-44) (discussing the server receiving wireless application software components from a software distribution computer and performing a check to determine licensing permissions);

The application server program being configured to transmit and install one or more client applications to one or more portable devices ("radio") (col.1, li.31-57; col.2, li.34-45; col.8, li.15-20);

The client application being configured to communicate with the remote wireless application server over a wireless network (fig.1; col.3, li.22-30).

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**Claim 2**

Fette further teaches a license server configured to update a database of license information in response to execution of the wireless application software and to cause notification of charges to be generated based on the license information (col.7, li.66 to col.8, li.9; col.9, li.39-49) (See also col.3, li.65 to col.4, li.2).

**Claim 3**

Fette further teaches a central application server ("software distribution computer"; fig.1, ref.114) configured to transmit the application server program and the one or more wireless application software to the one or more remote wireless application server computers (col.4, li.25-29).

**Claim 4**

Fette further teaches wherein the application server program is further configured to download and install a different set of wireless application server on different remote wireless application servers (col.3, li.43-51).

**Claim 5**

Fette further teaches wherein the data comprises application data resulting from execution of the wireless server application (col.7, li.66 to col.8, li.9; col.9, li.39-49).

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**Claim 6**

Fette further teaches wherein the application data is processed and filtered by the one or more remote wireless application servers before being transmitted to the central application server ("software distribution computer"; fig.1, ref.114) (col.4, li.30-35).

**Claim 7**

Fette further teaches wherein the application server program is further configured to cause the one or more remote application server to update one or more wireless application software programs on the one or more remote wireless application servers. Fette teaches a application server program functional to cause a remote application server to performing a licensing check (col.4, li.42-45) and subsequently updating a records computer to reflect a change in status ("granting a license"; col.8, li.3-5). Fette further teaches the records computer may be integrated as part of the remote application server (col.8, li.7-9).

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew



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Gubiotti whose telephone number is (703) 305-8285. The examiner can normally be reached on M-F, 8-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (703) 305-9662. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

MPG  
June 11, 2003

*Kakali Cha.*  
**KAKALI CHAKI**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**